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No. 85-1478

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LAWRENCE P. BOYCE,

Petitioner,

v.

JAMES H. RIDGELY AND ELISE BOYCE KELSEY,
PERSONAL REPRESENTATIVES OF THE ESTATE OF
ELISE GILLET BOYCE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Did the Court of Appeals of Maryland err in failing to grant Petitioner's Writ of Certiorari if the reason the Court of Special Appeals of Maryland dismissed Petitioner's Appeal was for failure to comply with Maryland Rules of Civil Procedure in the contents of Petitioner's brief filed in that Court.

II.

Under the facts of this case does Petitioner have standing to bring a caveat against the Will of his mother, Eliza Gillet Boyce a/k/a Elise Gillet Boyce.

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Maryland Rules of Procedure

Maryland Rules of Procedure, Rule 1028:

"a. Appellant to Print.

"In civil cases, unless a statement is filed pursuant to Rule 1029b or unless otherwise ordered by this Court, the appellant shall cause to be printed, either as a separate volume or as an appendix to his brief, extracts of the record which shall include the parts thereof provided for by section b of this Rule arranged in the order in which the same appear in the record. The extracts from the record so printed shall be copied verbatim except as otherwise

provided in section g of this Rule. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in the exhibits, reference to the pages of the record and transcript shall be made and the date of filing each paper printed shall be stated at the head of the copy. The table of contents, provided for in section c 1 and d 1 of Rule 1031 (Style and Contents of Brief) shall also cover the contents of an appendix bound with the brief and shall give reference to initial page of the direct, cross, and redirect examina-

tion of each witness and of each pleading, exhibit, or other paper printed, and shall identify each such document by a descriptive phrase, and if an exhibit, also, its number. An appendix bound separately shall be prefaced with a table of its contents in like form. If the transcript of testimony is reproduced, the pages shall be consecutively renumbered; any photograph, document or other paper filed as an exhibit which is to be included in the appendix or printed record extract shall be included in all copies of the appendix or printed record

extract, and may be either folded to the appropriate size, or photographically or mechanically reduced, so long as legibility is not impaired. The size, style, format and binding of the appendix or printed record extract shall be the same as those prescribed for a brief by section a of Rule 1031 (Style and Contents of Brief).

"b. Contents

"1. What to Be Included.

"The printed extract shall contain such parts of the record as may reasonably be necessary for the determi-

nation of the questions presented by the appeal, and shall include:

"(a) The judgment appealed from, together with the opinion or charge of the lower court, if any.

"(b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

"(c) Such other parts of the record as may be designated by the parties pursuant to section c. of this Rule.

"2. What to Be Excluded.

"The printed extract should not include those parts of the record which:

"(a) Support facts set forth in an agreed statement of facts pursuant to section g. of this Rule, or

"(b) Are summarized in a stipulation pursuant to section g. of this Rule."

Maryland Rules of Procedure, Rule 1030d.:

"d. Copies to Be Furnished Counsel.

"Two copies of each brief and printed extract shall be served by counsel filing the same on each of the counsel of record on the opposite side as soon as the same are forwarded to the Clerk of this Court for filing."

Maryland Rules of Procedure, Rule 1031c.:

"c. Contents of Appellant's Brief.

"The brief of the appellant shall contain in the order here indicated:

"1. Table of Contents and Citations.

"A table of contents and a table of citations of cases, constitutional provisions,

statutes, ordinances, rules and regulations, with cases alphabetically arranged. When Maryland cases are cited, the citation shall include a reference to the official Reports, if published."

CONCISE STATEMENT OF THE CASE

On February 13, 1983, Eliza Gillet Boyce a/k/a Elise Gillet Boyce, died testate in Baltimore County, Maryland. On February 16, 1983, her Will was offered for Probate with the Register of Wills for Baltimore County. As designated by her Will, Elise Boyce Kelsey and James H. Ridgely were appointed Personal Representatives of the estate.

On August 15, 1983, Lawrence Page Boyce,Petitioner, son of the decedent, filed in the Orphans' Court for Baltimore County a "Petition to Caveat" his mother's Will. In response to the Caveat, the then Special Administrators, Elise Boyce Kelsey and James H. Ridgely, filed a Motion Raising Preliminary Objection. The Motion alleged inter alia that (i) the Caveator,

Lawrence Page Boyce, had no "property interest" in the estate of his mother because, pursuant to a 1963 agreement between Mr. Boyce and the decedent, Mr. Boyce had taken his portion of his mother's estate during her lifetime, and (2) in consideration thereof, Mr. Boyce had waived all of his rights and interests in her estate and agreed not to contest her Will.

The Special Administrators requested the Orphans' Court for Baltimore County dismiss the Caveat based on the lack of standing of Mr. Boyce to bring the Caveat. On November 1, 1983, an evidentiary hearing was held in the Orphans' Court before Chief Judge Mensh and Judge Page of that Court.

The two judge panel of the Orphans' Court could not agree upon a definitive ruling and directed respondent to file an appeal to the Circuit Court for Baltimore County. On March 20, 1984, the Circuit Court for Baltimore County granted respondents' Motion Raising Preliminary Objection, finding that Petitioner had no standing to bring the caveat against his mother's Will. A Motion to Vacate the Order Granting Respondents' Motion was filed on June 29, 1984 and denied by the Circuit Court on November 7, 1984.

Petitioner again displeased by the ruling of the trial court filed a direct appeal to the Court of Special Appeals of Maryland on December 5, 1984, and on June 13, 1985, Petitioner filed his brief with the same Court. Respondent in lieu

of a brief filed a "Motion to Dismiss" on grounds that the rules of the Court of Special Appeals of Maryland had been flagrantly violated by the papers filed by Petitioner.

1. Petitioner had failed to timely serve upon counsel for respondents copies of his brief (Md. Rules, Rule 1030d):

2. That the brief failed to conform to the content requirements for briefs and record extracts as set forth in the rules (Md. Rules, 1031c and 1028).

On July 11, 1985, by "Order" the Court of Special Appeals of Maryland dismissed Petitioner's Appeal "for failure to comply with the Maryland Rules, Rule 1028 and 1031." Petitioner then filed a "Motion to Reinstate" his appeal, which

was denied by that Court on August 12, 1985. Pursuant to Court Rules a mandate of the Court was issued on August 19, 1985.

On August 29, 1985, a "Petition for Writ of Certiorari" was filed in the Court of Appeals of Maryland (the State of Maryland's highest Appellate Court). By "Order" of that Court dated December 2, 1985, the Petition was denied for reason stated "there has been no showing that review by certiorari is desirable and in the public interest." 304 Md. 631 (1985).

On March 3, 1986, Petitioner filed with The Supreme Court of the United States a Petition for Writ of Certiorari. This brief is filed in opposition to the Petition for Writ of Certiorari.

ARGUMENT

The Respondent respectfully suggests it would not be in order for this Court to grant Petitioner's Writ of Certiorari to the Court of Appeals of Maryland.

I

THE ISSUES PRESENTED FOR WRIT OF CERTIORARI ARE NOT SUFFICIENTLY IMPORTANT TO WARRANT THIS COURT'S ATTENTION.

All of the questions presented to this Court for review deal exclusively with Petitioner's claims that the Orphans' Court for Baltimore County, Maryland, should take certain specified actions with regard to the disposition of the estate of Petitioner's deceased mother, (all of which are different from Petitioner's original request to the Orphans' Court to set aside his mother's Will).

In all of the questions presented there is not a scintilla of claim of violation or interpretation of any federal right of the Petitioner by the Court of Appeals of Maryland or any other court which has considered Petitioner's claims.

No issues have been raised which in any fashion satisfy the requirements of jurisdiction of this Court, be it the Constitution of the United States, the Statutes of the United States or the Rules of this Court.

The issues in this case are unlikely to recur and are too narrow to warrant review by this Court on Certiorari. At best the questions raised are of interest only to the parties to this proceeding. The Petition requests this Court to review a lengthy record, previously presented to

four other courts, to see if it can find what other courts have been unable to find - proof that the Petitioner was denied any rights. This Court has indicated that "we do not grant a certiorari to review evidence and discuss specific facts" United States v. Johnson, 268 US 220, 227 (1925). The questions raised turn entirely on the facts of this case and have no impact outside the limits of this case.

The Writ of Certiorari should be denied.

II

THE CIRCUIT COURT FOR BALTIMORE COUNTY WAS CORRECT IN FINDING THAT PETITIONER, HAVING BY AGREEMENT WITH HIS MOTHER RENOUNCED HIS INTEREST IN HER ESTATE, HAD NO STANDING TO MAINTAIN A CAVEAT AGAINST HIS DECEASED MOTHER'S WILL.

In 1964 after a period of negotiation, Petitioner entered into an agreement with his mother in which he received assets of a value of $447,140.59 and in consideration therefor renounced all of his interest in his mother's estate and waived his right to contest her Will. At her death, Petitioner's mother's Will contained the following provision:

> "I make no provision in my Will for my son, LAWRENCE PAGE BOYCE, or his daughter, <u>because at his request</u>, I transferred a substantial amount of my assets to him during my lifetime." (emphasis added).

Unsatisfied with the sum of money he had received in 1964 and in violation of the Agreement, Petitioner filed a caveat

against his mother's Will. The Estate filed a Motion Raising Preliminary Objection based upon the agreement of the son and mother and questioning Petitioner's standing to bring the caveat. The merits of this Motion were decided in favor of the Estate by the Circuit Court for Baltimore County, Maryland.

The decision of that Court is sustained by the law of Maryland. In order to maintain a caveat, the caveator must possess a property interest in the estate of the decedent left after the challenged will is set aside. Although the Maryland statute describing caveat proceedings (Annotated Code of Maryland, Estates and Trusts Article § 5-207) does not define persons entitled to institute Will contests, Maryland law requires that a

caveator have a "property interest" in the estate which would exist after the contested Will is annulled.

In Senk, Executrix v. Mork, 212 Md. 413, 129 A.2d 675 (1957) states at page 420:

> "Our statutes do not specify the persons who are entitled to contest the validity of a will; but the rule is firmly established, as was recently restated by Judge Hammond in Fry v. Yeatman, 207 Md. 379, at 383, 114 A.2d 620, at 632: 'An interest in the property is the very foundation of the right to caveat.'" (cites omitted).

This rule was stated by Chief Judge Philip L. Sykes of the Orphans' Court of Baltimore City, in his authoritative work on the subject, Sykes, Contesc of Wills in Maryland (1941) §4 at 5:

> "There is no statute in Maryland describing or specifying the persons who may caveat wills, but the question has been passed upon in a number of cases. The general rule deducible from these decisions is, that any person having an interest in the property of a testator, in the event that the will is annulled, has the right to caveat his will, whether his interest arises from his relationship to the decedent, as in

the case of an heir, or is acquired under the provisions of a prior will."

It has also been held in Maryland that the right to caveat is both descendible and assignable. As stated in Yingling v. Smith, 254 Md. 366, 255 A.2d 64 (1969) at page 372:

"o o o

...that Maryland, since 1890 has aligned itself with the majority view that the right to caveat is a property right which is descendible as well as assignable."

In Edelen v. Edelen, 11 Md. 415 (1857) and Mauer v. Naill, 5 Md. 324 (1854), the Court of Appeals of Maryland

held that a wife's right to caveat could be relinquished in an anti-nuptial agreement.

Respondent proved to the satisfaction of the State Trial Court that Petitioner had entered into an agreement with his mother not to contest her Will. In an identical factual situation, Chief Judge Bond of the Court of Appeals of Maryland in Bruton v. Smith, 174 Md. 516, 199 At. 517 (1938), held such an agreement legally effective. In Bruton, supra, the son of decedent had entered into an agreement with his father providing that in consideration for a father's transfer of substantial assets to his son, the son agreed not to contest any Will made by his father. In affirming the Orphans' Court's order denying caveator, son's petition for issues, Judge Bond stated:

"There can be no doubt of the effectiveness in law of an agreement not to contest a will, none of the jurisdiction of the Orphans' Court to determine what persons have or have not an interest to make a contest, and none of the right of an intending contestant to have transmitted to a court of law for trial proper issues to try the facts upon which his interest, or lack of it, must be determined. Review of decisions, 55 A.L.R. 811, Ann. Cas. 1914D, 510; 3 Soerner, Amer. Law of Administration, 1889; Hartle v. Stahl, 27 Md. 157; Richard v. Izer, 95 Md. 451, 52 A. 592;

Schmidt v. Johnston, 154 Md. 125, 140 A. 87; Collins v. Cambridge Hospital, 158 Md. 112, 148 A. 114; Safe Deposit & Trust Co. v. Devilbiss, 128 Md. 182, 97 A. 367." (emphasis added).

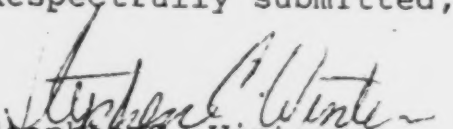
The decisions rendered by all of the Courts to which the issues have been addressed, decided the case correctly and in accord with the authorities founded in the law of the State of Maryland.

CONCLUSION

This case involves issues of state law and state procedural requirements. The case was decided fairly and correctly by each Maryland Court before whom Petitioner appeared. There are no issues raised by Petitioner which justify the issuance of the Writ of Certiorari.

Accordingly, it is respectfully suggested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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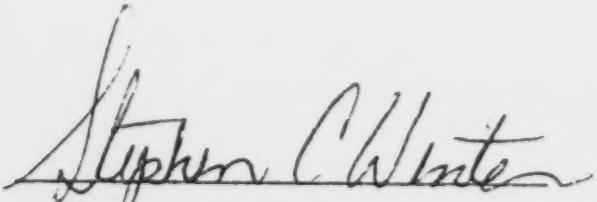
I HEREBY CERTIFY that on this day of , 1986, a copy of the foregoing Brief In Opposition To Petition For Writ Of Certiorari was mailed to Lawrence Page Boyce, 2200 Geist Road, Glyndon, Maryland 21071.



Stephen C. Winter